

Notice of Allowability

Application No.

10/700,408

Examiner

Eric V. Woods

Applicant(s)

ANANYA, BRIGIT

Art Unit

2672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Remarks filed 7/25/05, various interviews, and the like.
2. ☒ The allowed claim(s) is/are 1-15.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David Newhouse (24,911) on 9 November 2005.

In the claims, **they are amended as per the attached claims** (which copy was faxed in by applicant).

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The prior art does not teach the use of a weight as defined by applicant, which is why claims 5-6 and 12-13 are allowed.

The newly added limitation to claim 1 concerning the visibility of the centerline (and the other claims having the visible guide areas for drawing Bezier curves as described by applicant) is not found in prior art except for disclaimed commonly owned matter, and are therefore new and novel.

Therefore, claims 1-15 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany

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the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

General Notes

Examiner raised the issue of double patenting with applicant. Applicant in response filed a terminal disclaimer, noted below, along with an affidavit under 37 CFR 1.130 showing common ownership. Since none of the double patenting rejections was statutory (e.g. ODP), those rejections were not made.

Priority

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-15 of this application. Domestic priority has not been granted with respect to provisional application 60/424,097 filed on 11/05/2002 with respect to claims 1-15. Examiner does not find sufficient support in the provisional application for the recited (amended) features. Specifically, the applications are not the same, and do not appear to be substantially similar.

If applicant wants to dispute this point, in order to receive domestic priority, applicant is required to point out and distinctly make of record where in the provisional application (in page and line number format) support for each of the recited limitations is found. This must be done before payment of the issue fee. Also, any petitions to this effect must be filed within the time period required by 37 CFR 1.181(f) and prior to payment of the issue fee.

Response to Amendment

The amendment to the claims filed on 25 July 2005 does not comply with the requirements of 37 CFR 1.121(c) because the status of claims is not properly indicated, as in claim 1, where it is noted as "Initial Amendment". Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously

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presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

While the reply filed on 25 July 2005 is deficient, the newly provided version of the claims agreed upon by examiner and applicant will be fully responsive, and since that is being via examiner's amendment, it is therefore a moot point. However, the deficiency is noted.

Terminal Disclaimer

The terminal disclaimer filed on 27 October 2005 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of US Patent 6,441,823 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

Applicant's arguments, see Remarks pages 1-5, filed 25 July 2005, with respect to various rejections have been fully considered and are persuasive. See below.

The rejection of claims 1-14 under 35 U.S.C. 103(a) as unpatentable has been withdrawn in view of applicant's amendments.

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The rejections of claims 4, 6, and 14 under 35 U.S.C. 112, second paragraph, stand withdrawn in view of applicant's amendments to remove the indefinite language.

The objection to claim 7 is withdrawn since applicant has amended that claim.

The objections to claims 1-3, 7, 8, and 13 for numbering errors stand withdrawn since applicant has corrected these deficiencies.

The objection to claim 5 is withdrawn since applicant has corrected this deficiency in the most recent version of the claims supplied to examiner.

It is noted by examiner that applicant in no way addresses the rejections of all claims under 35 U.S.C. 101. As such, applicant's arguments are incomplete and **non-responsive**. However, in the interests of expediting prosecution, examiner will examine the claims to determine if the amendments bring them into compliance with 35 U.S.C. 101, which examiner believes that they do.

Applicant is advised that in further proceedings –after-final amendments, 312 amendments, or the like – any further defects in either amendment form or not addressing rejections and / or arguments – **will** result in the paper(s) in question being held **defective, non-responsive, or non-compliant** as appropriate.

Specifically, applicant sets forth a definition of weight that is consistent with the specification and shall be regarded as controlling for the duration of any patent issued for this application. Specifically, Remarks 2:18-23 creates a prosecution history estoppel of all other definitions of this term for purposes of any future claim constructions (cf. *Markman*).

Drawings

The drawings are objected to because the label 'Prior Art' next to Figure 1 is hand-written and very hard to read. A corrected version with the terms 'Prior Art' in a machine-printed format with the label prominently placed is required.

The drawings are objected to under 37 CFR 1.83(a) because they (specifically, Figure 8) fail to show the guide for point a_1 as described in the specification on for example page 12. The words "guide for a_1 " are on the drawing, but there is no indication of what form such a guide could or would take. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Figure 5 is objected to because the lower arrow elements labeled (a_0 , e_0) and (a_1 , e_1) are too close to Figure 6 and appear to run into it. They must be moved farther upwards.

Figures 14-16 are objected to because they are too close to each other. Specifically, applicant must either place Figures 14 and 15 on top of each other (as if only Figures 14 and 16 were on the page in the present drawings) or move them to separate pages.

Figures 17-19 are objected to because they are too close to each other. Specifically, applicant must either place Figures 17 and 18 on top of each other (as if only Figures 17 and 19 were on the page in the present drawings) or move them to separate pages. Further, examiner **strongly** suggests to applicant that each drawing should be placed in a separate box such as that used in Figures 8 and 9.

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Further, examiner **strongly** suggests to applicant that each drawing should be placed in a separate box such as that used in Figures 8 and 9.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric V. Woods whose telephone number is 571-272-7775. The examiner can normally be reached on M-F 7:30-4:30 alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on 571-272-7664. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric Woods


JEFFREY A. BRISS
PRIMARY EXAMINER

November 9, 2005